

OCTOBER 26, 2004

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman
Joan Beck, Member
Gene Raynor, Member
A. Susan Widerman, Member
Linda H. Lamone, Administrator
Judy Arnold, Assistant Attorney General
Ross Goldstein, Director of Campaign Finance
Donna Duncan, Director of Elections Management
Mary Cramer Wagner, Director of Voter Registration
Pam Woodside, Chief Information Officer
Terry Harris, Deputy Director of Campaign Finance
Jessica Jordan, Budget Officer
Nikki Trella, Election Reform Director
Jaimie Jacobs, Election Reform Deputy Director
Joseph Torre, Voting System Project Manager
Patrick Strauch, Voting System Project Manager

Also Present: Robert J. Antonetti, Sr., Prince George's County resident
Joe Bacchus, Capital News Service
Michael Curtis, Accenture
Joan Floyd, Baltimore City Council President Candidate
Andy Green, Baltimore Sun
Ken Fox, BCMC
Guy Harriman, Howard County Board of Elections
Regina Holt, Howard County resident
Heidi Johnson, Montgomery County resident & TrueVote MD
Jacqueline Johnson, Baltimore City resident & Maryland ACORN
Mitchell Klein, Maryland ACORN
Helen Kolbe, Howard County resident & TrueVote MD
Dave Laning, Baltimore County resident
Martin S. Lefstein, Baltimore Green Party
Lois McCarthy, Kent County resident
Tom Stuckey, Associated Press
Deborah Vollmer, Montgomery County resident
Aaron K. Wilkes, Darley Park Community Association
Shera Williams, Maryland ACORN

DECLARATION OF QUORUM PRESENT

Mr. Burger called the meeting to order at 1:35 p.m. [Although a declaration of a quorum was not declared, there was a quorum for the meeting.]

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APPROVAL OF MINUTES OF MEETING OF SEPTEMBER 24, 2004

The minutes from the September 24, 2004, meeting were not available. Approval of these minutes was deferred until the next meeting.

ADDITIONS TO THE AGENDA

Mr. Burger added one topic, Eligibility of Certain Candidates, to the agenda.

ADMINISTRATOR'S UPDATE

Ms. Lamone noted that each Board member had a written copy of the Administrator's Update in his or her folder.

VOTING SYSTEM

Ms. Lamone began her Administrator's Update by noting that the voting system is ready to go. She reported that all of the counties have completed Logic & Accuracy testing and all voting units are locked down. Staff has spent time managing county inventory of the voting units, specifically requests for additional voting units (Montgomery and Prince George's County) and maintenance. The transportation schedule for the delivery of the voting units is complete and being closely monitored. Ms. Lamone noted that, at the request of several local boards, the timeframe for delivery of the voting units was shortened. This will result in an increase in delivery costs. Ms. Lamone stated that the local boards seem pleased with the election preparation activities and attributed it to their participation in the Lessons Learned after the Primary Election.

Ms. Lamone reported on the successful parallel tests conducted in six counties. She recognized the significant contribution of Lu Pierson, former State Board member, and the League of Women Voters, who were partners in this effort. The parallel tests were well received by the public and press. Ms. Lamone noted that the only errors were human errors; the voting units accurately recorded and tabulated the votes cast. A representative of the League also selected four voting units from Montgomery County for the Election Day parallel testing.

LOCAL BOARD ATTORNEY CONFERENCE CALL

Ms. Lamone reported that Mr. Goldstein and Ms. Arnold coordinated a conference call with the local board attorneys. Minutes from the conference call were included in each board member's folder.

TELEPHONE USAGE

The deadline to register to vote was October 12, 2004. Ms. Lamone stated that the office received 3,800 incoming phone calls on the voter registration deadline. She anticipates even more phone calls on Election Day.

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ADMINISTRATOR'S UPDATE (continued)

CAMPAIGN FINANCE

There was a pre-election campaign finance report due on October 22, 2004. The report filing went smoothly.

PROVISIONAL VOTING

Ms. Lamone reported that, in response to a question from Howard County, the Attorney General's Office issued a letter of advice on the partial counting of provisional ballots. The Attorney General's Office advised that only votes for federal offices may be counted on ballots cast in the wrong precinct. A registered voter who votes in the wrong precinct will be eligible to have his or her vote for candidates for President and Vice-President, and U.S. Senate counted. The vote for a candidate for U.S. Congress, however, will count only if the vote was cast in the voter's correct Congressional District. No votes for State or local contests will be counted. Ms. Lamone noted that the issue of partially counting provisional ballots is being litigated across the country and that courts are issuing conflicting decisions.

ABSENTEE VOTING

Ms. Lamone stated that the number of absentee ballot applications is up. The day of the meeting was the deadline to request an absentee ballot, and the office was receiving a large number of faxed absentee ballot applications. As of October 26th, almost 130,000 absentee ballot applications had been received statewide. This compares with 96,000 for the 2000 election.

Ms. Lamone stated that the local boards were surveyed on whether they pay postage due on absentee ballots. According to the survey results, several local boards do not have an "insufficient postage" account with the United States Postal Service. Ms. Lamone expressed concern that voters in those counties that neglect to put adequate postage on the absentee ballot will likely have their absentee ballots returned to them or thrown away. Ms. Lamone asked the Board members for their thoughts on the local boards not paying the insufficient postage and having the ballots returned to the voter. The Board members expressed their support for a uniform policy to require each of the counties to handle insufficient postage of absentee ballots. A motion to require the local boards to make arrangements for handling insufficient postage of absentee ballots was unanimously approved.

PROCESSING OF VOTER AUTHORITY CARDS

Ms. Lamone reported that the SBE staff had processed in one week a total of 560,384 Voter Authority Cards for 11 counties. Processing requires feeding the sheets of Voter Authority Cards through a machine that tears the cards apart. Ms. Lamone thanked Joan Mobley, Robyn Terry, Sharon Proctor, Mike Mattison, and Thomas Queen for processing the cards.

MOCK ELECTION

Staff members have been working with the National Student/Parent Mock Election, and the mock election in Maryland schools was held on the day of the meeting. Over 150 schools participated.

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ADMINISTRATOR'S UPDATE (continued)

ACCESSIBILITY

Ms. Lamone brought to the Board's attention a chart in each member's folder showing the items purchased to improve the accessibility of polling places in the State. The items were purchased with the Help America Vote Act (HAVA) disability grant and represent temporary, Election Day improvements to accessibility.

PROPOSED REGULATIONS

Ms. Lamone reported that several comments on the proposed regulations previously adopted by the Board have been received and referenced a memorandum in each member's folder summarizing the comments. The comments concerned the regulations on the uniform definition of a vote and changing the name of the second absentee ballot canvass. Ms. Trella explained that the comments on the uniform definition of a vote concerned adding language that specifically states that the "cast ballot" button must be pressed. Ms. Trella stated that the verb in the proposed regulations is "cast," which makes it clear that the vote must be cast. Ms. Duncan explained that changing the name from "overseas canvass" to the "second absentee canvass" eliminates the incorrect assumption by the public and the media that the second absentee canvass represents all of the overseas and military ballots. The majority of overseas and military ballots are counted during the first absentee canvass. Ms. Trella stated that these regulations will be included on the next meeting's agenda for Board action.

HOWARD COUNTY

Ms. Lamone reported that two teams of staff visited Howard County to assist the new Election Director.

VOTER REGISTRATION SYSTEM REQUEST FOR PROPOSAL

Ms. Lamone reported that there was an insufficient number of bids submitted in response to the Request for Proposals for a statewide voter registration system. As a result, a new Request for Proposals will be issued. The target date of the re-issuance is the week of November 9th. Mr. Burger asked if the delay will impact the implementation schedule. Ms. Lamone replied that it will make it tight.

PHASE III IMPLEMENTATION OF VOTING SYSTEM

Ms. Lamone reported that the planning process for the implementation of the voting system in Baltimore City has begun.

HOMELAND SECURITY CONFERENCE CALLS

Ms. Lamone stated that a byproduct of the conference calls on homeland security has been the development of relationships between the local boards and their respective county governments.

NEW DEPUTY STATE CIO

Ms. Lamone noted that there is a new Deputy State Chief Information Officer, Greg McKibbin. Mr. McKibbin, previously with the Maryland Department of the Environment, met with Ms.

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ADMINISTRATOR'S UPDATE (continued)

Lamone and other members of the staff and committed his support. Mr. Burger thanked Russ Douplik, the former Deputy State Chief Information Officer, for his significant contributions to the State Board.

ELECTION DAY SUPPORT PLAN

Ms. Lamone brought to the Board's attention the Election Day Support Plan in each of the members' folders. The plan identifies where the Election Day help desks will be, who will be staffing them, and the flow of Election Day communications. The plan includes over 325 people, excluding State and county personnel. Mr. Burger commented that it was a very good plan and expressed his appreciation.

Ms. Lamone reported that there will be a "command center" in the office on Election Day. This help desk will include two representatives from a public relations firm working with Diebold. In addition, the State is providing hardware support for the voter registration servers in the counties. Ms. Lamone reported that there will be three different resources positioned around the State (Annapolis, Talbot County, and Washington County) to deploy if there are issues with the voter registration equipment.

SCHADE DECISION & DISASTER & INCIDENT RECOVERY MGMT PLAN

Ms. Lamone also noted that copies of the Circuit Court decision in the *Schade* case and the Disaster and Incident Recovery Management Plan were included in each member's folder.

FOREIGN OBSERVERS

Ms. Lamone stated that the office has received numerous requests to allow foreign observers at the polling places. The entities are requesting that the Board credential foreign observers, authorizing them to observe polling place operations on Election Day. A discussion followed on the balance between transparency in the election process and concern about polling place disruption and voter reaction. Mr. Burger, incorporating Ms. Beck's comments, made the following motion: Recognizing that there is an abundance of observation of the election process from citizens and previously credentialed poll watchers, the Board declined to credential foreign observers for this election. Ms. Widerman seconded the motion. The motion carried, with affirmative votes from Mr. Burger, Ms. Beck, and Ms. Widerman. Mr. Raynor opposed the motion.

VOTER REGISTRATION MANUAL

Ms. Lamone noted that the large binder in front of each Board member included the voter registration materials distributed to each local board.

ELECTION DAY PHOTO IDENTIFICATION

Ms. Lamone reported that photo identification is being provided for each individual visiting polling places on Election Day. Since the Board members will be visiting polling places on Election Day, Ms. Lamone offered photo identification to each Board member.

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ADMINISTRATOR'S UPDATE (continued)

Mr. Raynor asked whether the Board would be meeting on Election Day. Mr. Burger replied that the Board should meet on Election Day to report on what each member had observed at the polls.

ASSISTANT ATTORNEY GENERAL'S UPDATE

Judy Arnold distributed a written outline summarizing her update.

GREEN PARTY

After the Green Party was successful in its challenge to the petition process, the plaintiff's attorneys submitted a petition for over \$338,000 in legal fees. The plaintiffs claimed that they were entitled to these fees because they had prevailed on a federal constitutional claim. However, the case was decided based on the Maryland Constitution, which does not allow a claim for legal fees. The Circuit Court in Anne Arundel County denied the plaintiff's petition.

TRUEVOTE MARYLAND

TrueVote Maryland brought an action to enjoin the State Board from: (1) preventing TrueVote from credentialing challengers and watchers; and (2) preventing them from distributing literature and approaching voters within the 100-foot "no electioneering" zone. In an oral opinion, Judge Motz of the U.S. District Court for Maryland ruled in favor of the State. The opinion is being transcribed, as many states are interested in this ruling.

NADER/POPULIST PARTY

Attorneys for Nader have also filed a petition for legal fees. Like the Green Party, the lawsuit filed by Nader was decided on State law, not federal constitutional grounds, and it would appear that the petition for legal fees will be unsuccessful. Attorneys for Nader have also appealed to the Court of Appeals the Circuit Court order putting Nader on the ballot.

BLY SUIT

Mr. Bly, a pro se litigant and write-in candidate for U.S. Senate, sued the State Board in federal court. His claims include the paper trail issue and the erroneous claim that Maryland's voting system does not allow write-in voting.

CITIZENSHIP BOX ON VOTER REGISTRATION APPLICATION

Ms. Arnold reported that there has been significant discussion about the citizenship check box on the voter registration application. This issue is being litigated in a number of states. The Attorney General's Office advised that voter registration applications without the citizenship box checked should be processed and the applicant should be allowed to vote. This advice was based upon the Election Assistance Commission's (EAC) guidance suggesting that HAVA did not require that the voter check the citizenship box. Mr. Burger requested a copy of the EAC guidance. In response to a question about whether the citizenship question is required, Ms. Arnold explained that the EAC has taken the position that the state voter registration

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ASSISTANT ATTORNEY GENERAL'S UPDATE (continued)

applications are not required to have the citizenship question on the form. According to the EAC, only federal mail-in voter registration forms are required to have the citizenship question. There was discussion about the number of mail-in voter registration applications received that did not have the citizenship question answered. Anne Arundel received 6 applications, and Baltimore City received a "significant number." Ms. Arnold reminded the Board that each applicant signs the voter registration application under penalty of perjury and certifies that he or she meets all qualifications to register, including citizenship.

ELIGIBILITY OF CERTAIN CANDIDATES

Mr. Burger reported that the Board has been asked to consider claims by two candidates for the Baltimore City Council that their opposing candidates for City Council are not eligible because of the candidates' failure to file timely campaign finance reports.

At Mr. Burger's request, Mr. Goldstein explained what is required by § 13-332 of the Election Law Article. This section states that an individual is not eligible to become a candidate or treasurer of a campaign entity if the individual is responsible for late fees or delinquent reports. The Attorney General's Office has advised that only a chairman or treasurer of a committee, or a candidate and treasurer of a personal treasurer entity, is responsible for the filings and reports. Based upon this advice, candidates can file for office and assume office if they are elected, unless the candidate is responsible for the delinquent filings and reports.

Mr. Goldstein also explained the language that states that an individual cannot become a candidate for any public or party office if any campaign finance report due under § 13-304 from or on behalf of that individual was delinquent during the last five calendar years. The Attorney General's Office has also provided advice on the interpretation of this section, specifically on what "on behalf of" means. The Attorney General's Office advice is that a report of a campaign committee is not filed "on behalf of" the candidate. In accordance with this advice, a candidate is not liable for the reports filed by a committee, since the reports are not filed on the candidate's behalf.

Mr. Goldstein reported that a review of all Baltimore City candidates had been conducted to ensure that all candidates are eligible. Although there were Baltimore City Council candidate committees that had outstanding reports and late fees, all candidates for City Council were found to be eligible.

There was discussion about whether any legislative proposals had been contemplated to resolve this issue and whether the candidate should be responsible for the filings and reports of his or her authorized campaign committee. Mr. Goldstein proposed including information about this issue in the legislative report on late fees.

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ELIGIBILITY OF CERTAIN CANDIDATES (continued)

Mr. Burger recognized several guests that wished to address the Board on this issue. Mitch Klein of Maryland ACORN argued that the legislative history of this law dictates that the candidate should be held responsible for the filings and reports. Mr. Klein distributed to the Board a packet of information, including the section of the law at issue and relevant legislative notes. He requested that a specific candidate be removed from the ballot because, in his opinion, she is not eligible to be certified if she is elected. Jacqueline Johnson urged the Board to “follow the law.” Martin Lefstein argued that the candidate should be responsible since the candidate picks the chairman and treasurer and that a reading of the Summary Guide would lead the reader to believe that a candidate is prohibited from becoming a candidate or being sworn in if the candidate has not filed the required reports. Mr. Lefstein confirmed his understanding that the Board was operating under advice of the Attorney General and not a court order.

Aaron Wilkes, President of the Darley Park Community Association and former candidate, stated that he was required to pay his late fees before he was entitled to file for House of Delegates. He argued that this issue is one of fairness and allowing these loopholes to exist would call into question the Board’s integrity. Joan Floyd, candidate for Baltimore City Council President, urged the Board to act decisively at this meeting and concurred with the prior statements concerning the interpretation of the statute.

Mr. Burger stated that the State Board has received guidance from the Attorney General’s Office on this issue, and unless the advice is egregiously wrong, the Board should follow the advice. Mr. Goldstein again offered to include the Board’s opinion on this matter in the General Assembly report on late fees, and the Board concurred. Mr. Burger advised the guests that it appears that their concerns involve the language of the law and not SBE’s enforcement of it. He suggested that they approach the legislature and use SBE’s upcoming report on late fees in their efforts to change the law.

APPROVAL OF RECOUNT FORMS

Ms. Trella presented four recount forms to the Board for approval. Two of the forms, recount notices for a recount on the touchscreen voting system and a recount on the optical scan voting system, were amended to incorporate the recount options previously accepted by the Board. Two other forms had technical and formatting changes. The recount notice form provides notice of the recount and requests information regarding two individuals who will be observing the recount. Mr. Burger questioned whether there is a different form for a candidate or party that wanted more than two individuals to observe. Ms. Trella suggested adding a sentence instructing the recipient of the notice to make additional copies if more than two individuals wished to observe the recount. Ms. Wideman made a motion to accept the four recount forms, with the additional language instructing the individual to make additional copies if more than two individuals will observe. Ms. Beck seconded the motion. The motion was unanimously approved.

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OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

SCHEDULING OF NEXT MEETING

The next meeting of the State Board will be held on Tuesday, November 30, 2004, at 1:30 p.m. The Board will also meet on Tuesday, November 2, 2004, at 2:00 p.m.

CLOSED SESSION

Mr. Burger read and signed a statement allowing the Board members to meet in closed session. A closed session is permitted under State Government Article, § 10-508(a)(7) and (8). Ms. Widerman made a motion to hold a closed session. Ms. Beck seconded the motion. Mr. Burger, Ms. Beck, Mr. Raynor, and Ms. Widerman voted in favor of the motion.

The open session of the Board meeting adjourned at 2:55 p.m.

Gilles W. Burger, Chairman